Supreme Court U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In the
Supreme Court of the United States

DUANE MONTGOMERY,

Petitioner,

v.

CITIBANK, NA,

Respondent,

On Petition for a Writ of Certiorari to the Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

DUANE MONTGOMERY
P.O. BOX 251242
W. BLOOMFIELD, MI 48322
(313) 550-2358

Petitioner In Pro Per

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

QUESTIONS PRESENTED FOR REVIEW

1. Whether the State of Michigan District Court's General Practice or Policy of NOT Informing a party of the right to retain an attorney as required under Michigan Court Rule (MCR) 4.201(F)(2), (in an action to recover possession of real property), violates the Appellant-Petitioner's 5th and 14th Amendment Constitutional right of Due Process.

2. Whether the State of Michigan District Court's enforcement of an unsigned modified mortgage agreement in an action to recover possession of real property, violates the Appellant-Petitioner's 5th and 14th Amendment Constitutional right of Due Process.

3. Whether the State of Michigan District Court's denial of Jury Trial in an action to recover possession of real property, violates the Appellant-Petitioner's 5th and 14th Amendment Constitutional right of Due Process and Constitutional Right to Trial by Jury.

A LIST OF ALL PARTIES TO THE PROCEEDING

1. Plaintiff/Petitioner, Duane Montgomery, was a defendant in State of Michigan 48th District Court case 05-31871 (Citibank v Montgomery), held June 1, 2005. Plaintiff/Petitioner, Duane Montgomery, was not represented by an attorney or advised by the District Court that the Plaintiff/Petitioner had a right to retain an attorney.

2. Citibank, N.A., was the Plaintiff in 48th District Court case 05-31871 (Citibank v Montgomery), held June 1, 2005.

3. State of Michigan 48th District Court is the court that issued judgments against the Plaintiff/Petitioner in case 05-31871 (Citibank v Montgomery), held June 1, 2005.

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TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW i

A LIST OF ALL PARTIES TO THE PROCEEDING . ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

CITATIONS OF OPINIONS AND ORDERS ENTERED IN THE CASE 1

JURISDICTION 1

CONSTITUTIONAL PROVISIONS INVOLVED 2
- United States Constitution 2
- Amendment V 2
- Amendment XIV 2

STATEMENT OF THE CASE 3
- Trial in State of Michigan 48th District Court 3
- Appeal of Right to State of Michigan 6th Circuit Court 5
- Appeal by Leave to State of Michigan Court of Appeals 5
- Appeal by Leave to State of Michigan Supreme Court 5

REASONS FOR GRANTING THE PETITION 5
- Relief Sought in Complaint for Writ 6
- Michigan Court Rule 4.201(F)(2) 6
- Statement of the Issues Presented For Review 7
- FACTS GIVING RISE TO MONTGOMERY'S CLAIMS FOR RELIEF 7

Facts Necessary to Understand the Issues Presented by the Petition 7

CONCLUSION 8
PLAINTIFF'S CLAIM 8

APPENDIX
Appendix A: 6/26/06 State of Michigan Supreme Court Order 1a

Appendix B: 3/3/06 State of Michigan Court of Appeals Order 3a

Appendix C: 8/11/04 Transcript of Trial Court: Mortgage Electronic v Pencak 4a

Appendix D: 8/21/02 Transcript: Citibank v Montgomery 9a

Appendix E: Michigan Court Rule 4.201(F)(2) . . . 29a

TABLE OF AUTHORITIES

Cases

Somlyo v. J. Lu-Rob v Enterprises, Inc.,
932 F.2d 1043, 1046 (2d Cir. 1991) 8

U.S. Supreme Court MIRANDA v. ARIZONA,
384 U.S. 436 (1966) 5

U.S. Supreme Court PERNELL v. SOUTHALL REALTY,
416 U.S. 363 (1974) 6

Constitutional Amendments

U.S. Const. Amend. V 2

U.S. Const. Amend. XIV 2

Rules

MCR 4.201(F)(2). . . . . *passim*

Other Authorities

14 James Wm. Moore, Moore's Federal Practice
83.20 (3d ed. 1997) 8

CITATIONS OF OPINIONS AND ORDERS ENTERED IN THE CASE

1. State of Michigan 48th District Court, Bloomfield, MI Order of judgment against Petitioner, Duane Montgomery, on June 1, 2005 after denying the Defendant-Appellant a Jury trial.

2. State of Michigan 48th District Court, Bloomfield, On June 21, 2005, the District Court issued an Order of Writ or Possession.

3. State of Michigan 6th Circuit Court, Order denying Stay pending Appeal Denied, June 22, 2005.

4. State of Michigan 48th District Court Officers execution of Writ on June 23, 2005.

5. State of Michigan Court of Appeals, Order Denying Application for Leave to Appeal, March 3, 2006

6. State of Michigan Supreme Court, Order Denying Application of Leave to Appeal, June 26, 2006.

JURISDICTON

NOW COMES DEFENDANT-APPELLANT-PETITIONER, DUANE MONTGOMERY, In Pro per, respectfully submits a Petition for a Writ of Certiorari, as authorized under U.S.C. Title 28, § 1257, for a review of the Order issued on June 26, 2006 by the Michigan Supreme Court in docket SC 130-751, Denying Application for Leave to Appeal. The State of Michigan Court of Appeals (docket 264952), Order Denying Application for Leave to Appeal, was issued on March 3, 2006. The State of Michigan 6th

Circuit Court, Order denying Stay pending Appeal Denied, and dismissal of appeal was issued August 18, 2005 for docket 05-DA8295 AV and August 24, 2005 for docket 05-DA8321 AV. The State of Michigan 48th District Court, Bloomfield, MI Order of judgment against Petitioner, Duane Montgomery, was issued on June 1, 2005 after denying the Defendant-Appellant a Jury trial.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived of life, liberty, or property, without due process of law**; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall**

any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Trial in State of Michigan 48th District Court

1. On May 24, 2005, the Plaintiff-Appellee Citibank, N.A. filed a Summons and Complaint Termination of Tenancy, **(See Exhibit A1 and A2, Summons and Complaint)**.

2. The Summons states that "*you have a right to a jury trial*", **(See Exhibit A1, Summons)**.

3. On May 31, 2005, the 48th District Court received three (3) un-open envelops containing the Summons and Complaint, **(See Exhibit B1, B2, B3, Un-open envelopes containing Summons and Complaint)**.

4. On June 1, 2005, the Defendant-Appellant Duane Montgomery, filed a Jury Demand, motion to Quash or Strike and motion for summary Disposition.

5. Also on June 1. 2005, the Defendant-Appellant paid the $50 jury fee and a $20 motion fee, **(See Exhibit C, Jury fee receipt)**.

6. The Defendant-Appellant stated his answer and defenses on the record, **(See Exhibit D, Transcript of June 1, 2005 hearing, page 17)**.

7. On June 1, 2005, the District Court denied the Defendant-Appellant right to jury trial, **(See Exhibit D, Transcript of June 1, 2005 hearing, page 32)**.

8. During the June 1, 2005 hearing, the Defendant-Appellant notified the District Court that the Defendant-Appellant was not served with the Summons and Complaint, **(See Exhibit D, Transcript of June 1, 2005 hearing, page 23, line 1)**.

9. The District Court did not inform the Defendant-Appellant of the Defendant's Right to an Attorney as required under MCR 4.201(F)(2).

10. The District Court entered its judgment on June 1, 2005 after denying the Defendant-Appellant a Jury trial.

11. On June 9, 2005, the District Court held a hearing on the Defendant-Appellant's motion for stay pending appeal. The District Court denied Defendant-Appellant's motion for stay pending appeal, **(See Exhibit E, Transcript of June 9, 2005 hearing, page 9, line 19)**.

12. The Defendant-Appellant filed his Money claim and Counterclaims Complaint and Motion to move Counterclaim to circuit court on June 10, 2005.

13. On June 21, 2005, the District Court issued an Order of Writ or Possession.

14. On June 22, 2005, the Defendant-Appellant's motion for stay pending appeal in circuit court was heard. Plaintiff-Appellee claimed that the District Court granted the Defendant-Appellant's motion for stay, **(See Exhibit E, Transcript of June 22, 2005 hearing)**.

15. On June 23, 2005, court officers executed the Writ.

Appeal of Right to State of Michigan 6th Circuit Court

16. The State of Michigan 6th Circuit Court issued an Order August 18, 2005 for docket 05-DA8295 AV and August 24, 2005 for docket 05-DA8321 AV, dismissing appeal from District Court Order.

Appeal by Leave to State of Michigan Court of Appeals

17. The State of Michigan Court of Appeals' docket 264952, issued an Order dated March 3, 2006, Denying Application for Leave to Appeal.

Appeal by Leave to State of Michigan Supreme Court

18. The State of Michigan Supreme Court issued on June 26, 2006 in docket SC 130-751, an Order Denying Application for Leave to Appeal.

REASONS FOR GRANTING THE PETITION

The State of Michigan practice and procedures in actions to recover possession of real property that follow non judicial foreclosure proceeding violates the 5th and 14th Amendments of the U.S. Constitution.

The State of Michigan has a clear legal duty to Inform a party of the right to retain an attorney as required under MCR 4.201(F)(2) and under the standard set by this Honorable Court in **U.S. Supreme Court MIRANDA v. ARIZONA, 384 U.S. 436 (1966)**

The State of Michigan also has a clear legal duty to provide a Defendant with a Trial by Jury when requested as required under the State of Michigan Constitution and under the standard set by this Honorable Court in ***U.S. Supreme Court PERNELL v. SOUTHALL REALTY, 416 U.S. 363 (1974)***

The Petitioner has exhausted all adequate alternative remedy available. The Petitioner is challenging the **General Policy or Practice** of the State of Michigan's 48th District Court of failing to Inform a party of the right to retain an attorney as required under MCR 4.201(F)(2) in Summary Proceedings to Recover Possession of Premises. The authority of this Honorable Supreme Court to issue this Writ to compel judicial officers (of a lower court) to comply with mandatory legal duties, is derived from U.S.C. Title 28, § 1257

Relief Sought in Complaint for Writ

1. The Petitioner petitions this Honorable Court for a Writ Compelling the Judges of the State of Michigan 48th District Court to:

   A. Inform a party of the right to retain an attorney as required under MCR 4.201(F)(2).

Michigan Court Rule 4.201(F)(2)

*Right to an Attorney. If either party appears in person without an attorney, the court **must** inform that party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.*

Statement of the Issues Presented For Review

2. Whether the District Court Judges failed to perform a clear legal duty by failing to Inform a party of the right to retain an attorney as required under MCR 4.201(F)(2)

FACTS GIVING RISE TO MONTGOMERY'S CLAIMS FOR RELIEF

Facts Necessary to Understand the Issues Presented by the Petition

3. On June 1, 2005, the Plaintiff, Duane Montgomery appeared at a hearing for Summary Proceedings to Recover Possession of Premises. The Plaintiff was not represented by an attorney and the Trial Court failed to inform the Plaintiff of his right to retain an attorney as required under MCR 4.201(F)(2), (***See Transcript of Citibank v. Montgomery, App. D at 9a***). The Plaintiff's Application for Leave to Appeal to this Honorable Court was denied on June 26, 2006, (***See Order Denying Application for Leave, App. A at 1a***)

4. On August 11, 2004, Ms. Stacy Pencak appeared at a hearing for Summary Proceedings to Recover Possession of Premises. Ms. Pencak was not represented by an attorney and the Trial Court failed to inform Ms. Pencak of her right to retain an attorney as required under MCR 4.201(F)(2). (***See Transcript of Mortgage Electronic Registration v. Stacy Pencak, App. C at 4a***)

5. Review of both transcript clearly shows that the both District Court Judges failed to inform the Plaintiff and Ms. Pencak of their right to retain an attorney as required under MCR 4.201(F)(2).

CONCLUSION

6. To compel judicial officers to comply with mandatory legal duties, the writ or order of superintending control must be used. See MCR 3.302(C). "A superintending control order replaces the writ of mandamus when directed to a lower court or tribunal"

7. An action for superintending control may be proper to challenge a general practice of the lower court. *In re Lafayette Towers,* 200 Mich App 269, 271–72 (1993).

PLAINTIFF'S CLAIM

8. A local rule of a district court has the force of law, Somlyo v. J. Lu-Rob v Enterprises, Inc., 932 F.2d 1043, 1046 (2d Cir. 1991); see also 14 James Wm. Moore, Moore's Federal Practice 83.20 (3d ed. 1997), and the parties are charged with knowledge of the district court's rules the same as with knowledge of the Federal Rules and all federal law. Id. at 83.34. Fed. R. Civ. P. 83(b).

9. The Respondent, 48th District Court had a statutory obligation to inform a *party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.*

10. The Respondent, 48th District Court, has a General Practice or Policy of NOT informing parties of *the right to retain an attorney or inform the party about legal aid assistance when it is available.*

11. The District Court General Practice or Policy NOT to inform a *party of the right to retain an attorney or inform*

the party about legal aid assistance when it is available violates the Plaintiff-Appellant's due process rights.

WHEREFORE, Plaintiff-Petitioner, Duane Montgomery, respectfully request that this Court:

1. Issue a Peremptory Writ ordering Respondent State of Michigan 48th District Court to immediately discontinue the General Practice of NOT informing a *party of the right to retain an attorney or NOT inform the party about legal aid assistance when it is available.*

2. Order the Reversal of the Judgment against the Plaintiff-Petitioner Duane Montgomery and return possession of the Plaintiff-Petitioner's property.

3. Award costs to Plaintiff.

4. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Duane Montgomery
P.O. Box 251242
W. Bloomfield, MI 48322
(313)-550-2358

Plaintiff Proceeds in *Pro Per*

APPENDIX A

STATE OF MICHIGAN SUPREME COURT DECISION

SC: 130751
COA: 264952

[Filed June 26, 2006]

CITIBANK, NA,
Plaintiff-Appellee,

v.

DUANE MONTGOMERY,
Defendant-Appellant.

ORDER

On order of the Court, the application for leave to appeal the March 3, 2006, order of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion to consolidate and the motion for sanctions are DENIED.

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 26, 2006 /s/ Corbin R. Davis
Clerk

APPENDIX B

STATE OF MICHIGAN COURT OF APPEALS DECISION

Docket No. 264952
LC No. 05-008295-AV; 05-008321-AV

[Filed March 3, 2006]

CITIBANK, NA)
)
v.)
)
DUANE MONTGOMERY)
)

ORDER

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

The motion for leave to file a late answer is GRANTED.

The motion for leave to file a reply to the answer is DENIED.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

Mar 3 2006 — Date

/s/ Sandra Schultz Mengel — Chief Clerk

APPENDIX C

STATE OF MICHIGAN
IN THE 48TH JUDICIAL DISTRICT FOR THE COUNTY OF OAKLAND

District Court No. 04-32769 LT

[Filed August 11, 2004]

MORTGAGE ELECTRONIC REGISTRATION, Plaintiff,	)
vs.	)
MATTHEW PENCAK & STACY PENCAK, Defendant.	)

HEARING
BEFORE THE HONORABLE
KIMBERLY SMALL, DISTRICT JUDGE
Bloomfield Hills, Michigan
Wednesday, August 11, 2004

THE COURT: Calling the case of Mortgage Electronic versus Pencak, 04-32769.

MS. BALE: Good morning, your Honor. Heather Bale on behalf of Mortgage Electric.

THE COURT: All right. Today is the date and time scheduled for a hearing on termination of tenancy. Have you folks been able to resolve this?

MS. BALE: We have not. We have had an opportunity to discuss the matter and I think we're on the same page, but we have not entered into a consent judgment. This is a foreclosure following - I'm sorry - an eviction following foreclosure. The period of redemption expired in July and we're seeking termination of tenancy based on the sale, foreclosure of the property.

THE COURT: All right. Ms. Pencak, I need you to stand for just a moment. I need you to state your full name, please?

MS. PENCAK: Stacy Pencak.

THE COURT: All right. Ms. Pencak, if you'll raise your right hand.

Do you swear or affirm what you're about to testify to will be the truth?

MS. PENCAK: Yes.

THE COURT: All right. Tell me what is your defense to this? What's your position?

MS. PENCAK: I had a bad divorce and everything kept going wrong with the house and everything. I fell behind and right now, all I'm asking for is the possibly of 30 days instead of ten to get my daughter and I situated into a place to live.

THE COURT: All right. So certainly you don't dispute that they have a right to have you out of the residence?

MS. PENCAK: The only thing I would like is maybe to have 30 days instead of ten.

THE COURT: All right. Is she behind continually in rent?

MS. BALE: Again, it's not a rent. It's a foreclosure.

THE COURT: In the mortgage. It was a foreclosure. Tell me, what are your folks willing to do, if anything? Obviously, under the law, I have to follow the law. Ten days is what she's given. Are you folks willing to do anything else?

MS. BALE: Unfortunately, I don't have the authority to extend that period.

THE COURT: Ms. Pencak, let me ask you this. Do you have any money that you can pay them if they're willing, and I certainly can't make them, but if they're willing, can you pay them rent for the month?

MS. PENCAK: Yes, I can work that out definitely.

THE COURT: And how - anybody you can call to see if they will extend it? I know you don't have the authority and I certainly understand why.

MS. BALE: Yeah, I can do a proposal to see what they would accept.

THE COURT: All right. And then, of course, the rent would be paid immediately and if she failed to pay it and then the writ would issue within the ten days, under the law.

MS. BALE: Could you pass it for a few moments?

THE COURT: I'd be happy to.

MS. BALE: Thank you, your Honor.

THE COURT: Thank you. I'll pass this matter for a few moments.

Ms. Pencak, just go ahead and have a seat right there.

(Others matters were heard)

THE COURT: Recalling the case of Mortgage Electronic Registration versus Pencak, 04-32769.

MS. BALE: Thank you, your Honor. Heather Bale again on behalf of plaintiff Mortgage Electronic Registration. I did have an opportunity to talk to my client and unfortunately they are unwilling to extend the period.

THE COURT: Well, and it's certainly their decision, but thank you for making the effort. I appreciate it and I'm sure the defendant appreciates it.

Ma'am, what I'm going to need to do is, I'm going to enter the Judgment. You're going to have ten days and if you don't vacate in ten days, then I'll issue a writ and they then can evict you. Okay? Good luck to you.

MS. BALE: Your Honor, if I may, under the date of 8/23, ten days falls on a Saturday. That would extend it to the following Monday.

THE COURT: Okay, That's a good start. So it now gives you 12 days.

MS. BALE: May I approach?

THE COURT: Yes.

And Ms. Pencak, if you'll approach also for a moment.

(Bench conference off the record)

(Proceedings concluded)

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I CERTIFY that this transcript, consisting of seven (7) pages, is complete, true, and correct transcript of the proceedings and testimony taken in this case on August 11, 2004.

DATE: June 9, 2006

/s/

Sheryl Bonfiglio, CER 5825
Certified Electronic Reporter
4280 Telegraph Road
Bloomfield Hills, Michigan 38302
(248) 433-9300

APPENDIX D

STATE OF MICHIGAN
IN THE SIXTH JUDICIAL CIRCUIT COURT

No. 2002 185328 PH

[Filed August 21, 2002]

DUANE MONTGOMERY,
Plaintiff,

vs.

CITIBANK, N.A., a New Jersey Corporation
Defendant.

PROCEEDINGS
HELD BEFORE THE HONORABLE
DENNIS N. POWERS
in the City of Novi, Michigan
on Wednesday, August 21, 2002

Novi, Michigan
Wednesday, August 21, 2002,
At or about 9:52 A.M.

THE COURT: Calling the matter of Duane Montgomery versus Citibank North America. Appearances, please.

MS. CLARK: Michelle Clark appearing on behalf of Defendant Citibank. This is Defendant's Motion in Limine.

MR. MONTGOMERY Good morning, Your Honor. Duane Montgomery, the Plaintiff, is pro per.

THE COURT: All right. Your motion in limine, please.

MS. CLARK: Yes, Your Honor. I bring this motion in limine in response to a trial brief that I was served with last Friday, which I believe was the 19th - 16th, the 16th of August, as well as jury instructions that I was served with on the I believe 15th of August, both of which reference claims and causes of action not asserted in Plaintiff's Second Amended Complaint. The trial brief under Claims deals with nothing except claims for negligence, all - various kinds of negligence claims and breach of contract claims. The Second Amended Complaint that was filed by the Plaintiff in this case alleges only three causes of action, one being under the Michigan Consumer, Protection Act, subparagraph (bb), one under the Regulated Debt Collection Act under the state and one under Federal Fair Debt Collection Practices Act.

And I would like this Court to limit Plaintiff's causes of action to the causes of action that have been set forth in the Complaint, to limit his testimony to testimony relevant to those causes of complaint, and to limit the jury instructions proposed to the causes of action listed in the Second Amended Complaint.

THE COURT: And that's basically three causes of action, is that what you're saying?

MS. CLARK: That's correct, Your Honor.

THE COURT: All right. Mr. Montgomery, your response?

MR. MONTGOMERY: Yes, Your Honor. First, I would like to object to the Defendant's motion on the record as being untimely. The final pretrial order said – stated that those motions would be held on August the 14th and the Defense motion was on file after that date. There was a hearing at the Circuit Court on August the 14th, which the Defendant had a reasonable opportunity to present her motion at that time.

I'm not sure if you had an opportunity to review my response to the Defendant's motion, but with my response I also filed a Motion to Amend Evidence to conform to the evidence.

The Defendant refused to provide discovery last year. I filed a motion with the Court to compel discovery and that motion was granted on August the 14th of this year. The Defendant had till Monday, August 19th to provide the remainder of the discovery that I requested. The additional claims that I filed were based on the discovery that I received from the Defendant. The Defendant – the reason for the late filing of the additional claims is solely due to the Defendant's refusal to provide me with any discovery. As soon as I discovered that I had evidence and there was additional claims that I had to file, I filed them immediately after I received the discovery from the Defendants.

THE COURT: Did you ask for – or did you go to court and make a motion and ask for those dates to be extended?

MR. MONTGOMERY: The discovery was received after the dates that had passed.

THE COURT: Did you bring a motion before anybody relative to this fact that you wanted to add these – add this at a late date?

MR. MONTGOMERY: Yeah. I just filed a motion yesterday with the Circuit Court, which I dropped a copy off yesterday with your office.

THE COURT: This is a fact-pleading stage. You're going to be held to your pleadings, and that means that the Motion in Limine is going to be granted. You will not be allowed to introduce those items that you asked to be introduced; that is, the claim to bankruptcy, claim of additional contract violations, et cetera. This is a fact-pleading stage.

Anything further from either of you?

MS. CLARK: I would only respond, although it's not necessary, that the reason that I didn't comply with the court order regarding motions in limine is I was not served with the trial brief until after that date had passed.

THE COURT: Lot of problems. I'm going to indicate for the record we have a Plaintiff in pro per. Nothing will give him the right in a jury trial to have a narrative testimony because that prohibits objections because no one knows what is going to be said. Clearly, the Plaintiff will ask his own question. He will answer his own question. He'll be held to answers to those areas that he asks questions to. He cannot ramble on. Neither can your party ramble on. You ask specific questions. We'll have specific answers. Anything beyond that, if the Defendant objects, that objection will be granted. You'll have to ask your question, answer your question. Do you understand that? Mr. Montgomery?

MR. MONTGOMERY: Yes, Your Honor.

THE COURT: All right. Do you understand that?

MS. CLARK: I understand that, Your Honor. I would only ask – I believe that we discussed this off the record that the jury be informed prior to the start of trial of the method that Mr. Montgomery is going to use to present his case so that they don't think I'm badgering him.

THE COURT: I will so inform them.

MS. CLARK: Thank you, your Honor.

THE COURT: So how much time do you folks need before we're ready to go with opening statement?

MS. CLARK: I'm ready to go, Your Honor.

MR. MONTGOMERY: Your Honor, I just have a lot of equipment to set up to get my exhibits. I would like for 30 minutes to an hour to get things set up.

THE COURT: And why weren't you here this morning at 8:30 setting up?

MR. MONTGOMERY: I was, Your Honor, and the court clerk advised me to hold off on setting up.

MS. CLARK: He did, Your Honor.

MR. MONTGOMERY: Just in case this case was adjourned.

THE COURT: Are you going to need these before noon today, these items set up? Are they going – can you set up

during lunch hour? I don't want to take another hour of the jury's time.

MR. MONTGOMERY: They're my - display my exhibits, Your Honor. I can't present my exhibits.

MS. CLARK: There was no exhibit list filed. I'm a little curious as to what exhibits he's going to be presenting.

THE COURT: That's not the issue. The issue is did you present an exhibit list?

MR. MONTGOMERY: Yes, I did, Your Honor.

THE COURT: When did you present your exhibit list?

MR. MONTGOMERY: I filed it with the trial brief on August the 14th.

THE COURT: And your objection is?

MS. CLARK: My objection is that's not in compliance with the exhibit list requirement. That was in compliance with the court order stating stipulated exhibits would be numbered by that date and submitted to the Court. All other exhibits I believe were due in - I'm just guessing, but January or February in the Circuit Court, and at the very latest it might have been submitted with a witness list that was due at the end of June in the visiting judge's court. You know, because of the structure, there have been various dates; but certainly the order does not allow him to submit a three-inch exhibit list one week before trial, Your Honor.

MR. MONTGOMERY: Your Honor, I filed an exhibit list when we were with the other judge back in January last year

before this case was dismissed and it was reinstated, so the file does have my exhibit list and the exhibits were filed with the Complaint.

THE COURT: Did you get those exhibits?

MS. CLARK: I don't have them, Your Honor, but if he shows me that he did file an exhibit list timely, of course, I would withdraw my objection to any exhibits set forth in that exhibit list. However, I don't know what he's doing with this equipment over here. But I'm more than willing to allow anything if he does, in fact, have a – I do not have it in my file.

THE COURT: Do you have proof that you filed your exhibit list timely, sir?

MR. MONTGOMERY: Not with me now, Your Honor. All – I have . . . I have on my Plaintiff's Objections to Defendant's Amended Witness List and on my Plaintiff's Trial Brief which was filed on August 15th.

MS. CLARK: Your Honor, that's not an exhibit list.

THE COURT: No. We're asking – an exhibit list. Let's go back to the pretrial order which is all that we have to guide us over here.

MR. MONTGOMERY: Right.

THE COURT: It says a list of witnesses, experts. Let's see, motion in limine. Exhibits must be marked prior to the date of trial. Plaintiff shall use numbers . . . before trial is set.

Well, I'm looking at the final pretrial order; and where does it say that exhibits have to be filed by a particular date?

MS. CLARK: Your Honor, I was referring back to the Circuit Court orders prior to – only just – remanded is the wrong word. This was only moved to this docket from where this pretrial order came from in April, so the – what I'm saying is all the other – he filed a Complaint. He filed an Amended Compliant. It was dismissed on summary disposition. Filed a Second amended Complaint. There was a new scheduling order with new dates requiring witness and exhibit lists, and pursuant to that order, which if you give me time, I could probably find for you. I don't – he didn't file an exhibit list.

THE COURT: Let's look for that order because that order will determine whether he, in fact, will be entitled to have those exhibits.

(Off the record 10:03 A.M. to 10:05 A.M.)

THE COURT: This is in the Plaintiff's list. He filed a calendar conference order. That order before Judge Chabot, 7th day of November 2001. It is not legible.

A calendar conference order as ordered by Judge Chabot states that the exhibits must be filed and numbered at the same time or prior to the final pretrial order date, and that date given in the calendar conference order says May the 28th of 2002. It shall be prepared jointly by all parties. The Plaintiff shall have the primary responsibility for filing this pretrial order which shall contain the exhibit list. If I find that, then those exhibits will be allowed. If we didn't do that, then we have a problem.

So, Counsel, you're saying that there was no exhibit list filed with the final pretrial order on May the 28th?

MS. CLARK: I'm saying that I was not served and I have no knowledge of any having been filed.

THE COURT: All right. So he's given you no list of exhibits at all?

MS. CLARK: I was provided with a list of exhibits last week after the last hearing in front of judge –

THE COURT: But nothing prior to May the 28th of 2002?

MS. CLARK: No, Your Honor.

THE COURT: No?

MS. CLARK: No, Your Honor.

THE COURT: If that's so, you're not going to be allowed to introduce your exhibits, Mr. Montgomery.

MR. MONTGOMERY: Your Honor, most of the exhibits I did not even receive to after Defendant provided discovery.

THE COURT: Mr. Montgomery, you're the Plaintiff. This order says that you have the duty of putting together the final pretrial order which includes all exhibits. If, in fact, you can't agree on exhibits, then you bring them to the Court and say it. You cannot bring in exhibits today that you brought in yesterday. And you filed yesterday or last week. The order says they must be presented and filed on February – on May the 28th of 2002. Did you do that?

MR. MONTGOMERY: Yes, I did. Your Honor.

THE COURT: Show me the proof.

MR. MONTGOMERY: That's what I'm looking for, Your Honor. Your Honor, I don't have the hard copy and I don't have a copy of the docket statement, the docket sheet that would have that.

THE COURT: I have only what they've sent me from the Circuit Court and I've gone through that, and I find no filing in here of anything that you filed. I see no filing inside your trial brief or anything else that shows that you filed those things, that exhibits.

MR. MONTGOMERY: Your Honor, I would – since we're – since mot – since these files are at the Circuit Court I'm going to have to ask – because I can't present any exhibits, I have to ask for some type of adjustment so we can get those files from the Circuit Court.

THE COURT: Today's the day set for trial.

MR. MONTGOMERY: Your Honor, but this issues was not – I was not aware that this issue was going to come up because the Defendant never filed this order or challenged this order.

THE COURT: There's nothing to challenge until you try and move forward. She has – what's she going to challenge? You filed nothing. Show me a copy of the final pretrial order which you filed on May the 28th, on or before that date.

MR. MONTGOMERY: Your Honor, the final pretrial order was made by the visiting judge. We had a hearing with the

judge. I submitted all of my evidence and the judge wrote out the order right there in the courtroom.

THE COURT: That's the final pretrial order, but we're talking about this one in which you included in your brief which says that all exhibits are due by the 28th of May of 2002.

MR. MONTGOMERY: Right, Your Honor. When we met with the visiting judge, the date – the trial date was set for June. The judge said this order is no longer enforced because she's issued a new order.

MS. CLARK: That's not true.

THE COURT: I'm sorry. This order is in effect.

MR. MONTGOMERY: Your Honor –

THE COURT: Show me an order that says this order is no longer in effect.

MR. MONGTOMERY: The Defendant never complied with anything in this order. They never provided a witness list. They never pleaded discovery.

THE COURT: Sir, you're the Plaintiff. You have the duty of putting together the pretrial order. That's what this says. That's what Judge Chabot ordered. That's your duty. You want to be a Plaintiff, you have to follow what the judge said.

MR. MONTGOMERY: Yes, Your Honor.

THE COURT: The judge said that's what you have to do. My questions is, did you do it?

MR. MONTGOMERY: Yes, I did, Your Honor.

THE COURT: Show it to me.

MR. MONTGOMERY: Your Honor, I – all I have is the – all I – I don't have the documentation with me, Your Honor. I have to get it from the Circuit Court.

THE COURT: We're set to go to trial. I'm not going to let you run back to Circuit Court and present what you have. Did you read this order which you presented and this document to me?

MR. MONTGOMERY: Yes, Your Honor.

THE COURT: And what does it say? It says by the 28th of May. Show me a document that says this is no longer in effect or this has been changed by Judge Chabot.

MR. MONTGOMERY: Your Honor, this order was based on the trial date set for June.

THE COURT: Doesn't matter. It doesn't matter. It stays in effect unless you have another order which says that this order is no longer in effect.

MR. MONTGOMERY: Okay, Your Honor. Like I said, I filed – I filed the exhibit list.

THE COURT: When did you file the exhibit list?

MR. MONTGOMERY: Your Honor, I filed it twice. I filed in 19-- in 2000 and in 2001.

THE COURT: Okay. Well, the one in 2000 wouldn't count since there's an order of summary judgment throwing the case out.

MR. MONTGOMERY: Your Honor – okay, I'm not . . . Your Honor, but it was still part of the file. The file was re-opened. All that was still part of the same file. The exhibits that I'm submitted are the ones that were attached to the Complaint.

THE COURT: You show me. All I need from you is in the final pretrial order which we filed on May the 28th of 2002, that order shall be prepared jointly by all parties. Plaintiff shall have the primary responsibility for filing this final pretrial order and shall contain the following: The exhibits. Just show me that document and we go on. That's the only document I want to see.

MR. MONTGOMERY: Your Honor, I do not have the document with me now. It's at the court, at the Circuit Court.

THE COURT: Do you have a runner that can go up to Circuit Court and get that document for you?

MR. MONTGOMERY: Well, Your Honor, it would be me that would. No, I do not. I would go get it.

MS. CLARK: And for the record I wasn't served with it if he did file one, so I would ask that he also bring a proof of service if he's going to bring a copy of the exhibit list. That he bring a proof of service that's been filed with the court.

THE COURT: He'll have to do that. We'll stand adjourned. We'll stand adjourned to 1:30.

MR. MONTGOMERY: Your Honor, is it okay to leave the equipment here or do I need to move it?

THE COURT: Leave the equipment there and we'll see what happens. If I need to copy that pretrial order and this case will be finished on Friday. You're just using up half a day of valuable time by not being prepared, Mr. Montgomery. I need to see that order.

MR. MONTGOMERY: Thank You, Your Honor.

THE COURT: You will be – in fact, let's see. It gives you an hour, 11:20. We should – you should be able to be back here and set up to go if you have that final pretrial order. You should be back here by noon. You should be able to do that by noon, I would think.

MR. MONTGOMERY: Okay, Your Honor. I'm leaving now.

MS. CLARK: Opening arguments at noon, Your Honor?

THE COURT: No, we're going to do it at 1:30 because I can't keep the jury. What am I going to do? Send the jury to lunch at 10:30? I mean that's not fair to the jury. They're going to be under enough pressure.

(Momentarily off the record)

THE COURT: Calling the matter of Duane Montgomery versus Citibank North America. All right, Counsel.

MS. CLARK: Yes, Your Honor. I just wanted on the record the Court to address the order that I received from the Circuit Court signed by Chief Judge Young setting this matter, which was also scheduled for trial today, for a settlement conference

on October 4th and trial as soon as October 7th. It's my understanding that the Circuit Court has confirmed that we can go forward with trial today and that this won't be an appealable issue.

THE COURT: Right. Miss Renfrow, the Deputy Court Administrator, called over to Circuit Court. We're told that that's a general order that's issued for all cases that are outstanding and that that order does not apply to this case, and this case is to proceed to trial today.

MS. CLARK: Thank you, Your Honor.

THE COURT: That's what we were told.

(Off the record 10:22 A.M. to 2:03 P.M.)

THE COURT: Recalling the matter of Duane Montgomery versus Citibank North America. Appearances.

MS. CLARK: Michelle Clark appearing on behalf of Defendant Citibank.

MR. MONTGOMERY: Good afternoon, Your Honor. Duane Montgomery, the Plaintiff, in pro per.

MS. CLARK: Your Honor, I am happy to report on the record that we have settled this matter. The Plaintiff is going to put the settlement terms on the record.

THE COURT: All right.

MR. MONTGOMERY: Yes, Your Honor, we have come to a settlement. I have been informed by the Defendant that the outstanding mortgage balance of $529,069.58 will be financed

at a fixed rate of 7 percent over 27 years. Also, I will be allowed to retain the money that I have in Chapter XIII, which is approximately $16,000. The first mortgage payment will be October 1st, 2002.

Next is an amount of $48,137.86 and an additional amount of thirty-two dollars nine hundred eighteen - excuse me, let me back up - $32,918.51 will be financed at zero percent interest for 27 years as a balloon payment

Also under the standing - understanding that the Defendants will issue a note or a memo to the credit reporting agencies concerning that the debt was in dispute and that the dispute has been resolved. Is that correct?

MS. CLARK: Correct.

MR. MONTGOMERY: Is there anything else to add?

MS. CLARK: I'll just add a few things. The settlement - what this settlement is doing, Your Honor, is taking the current arrearage owed by the Plaintiff and splitting it in two, half of the interest arrearage being ballooned as the Plaintiff specified and half being added to his principle balance at seven percent fixed rate.

The other things that are included in this proposal is a waiver of all legal fees in the amount of $4,161.69, late charges of $5,161.44

Further, Plaintiff agrees to dismiss Citibank with prejudice and to sign a full release of claims as to Citibank, Advance Mortgage and Chase Manhattan Mortgage Corporation.

The Defendant does agree to report a dispute resolved in court with credit reporting agencies that have previously reported derogatory information with.

I think that is the extent of the settlement offer.

MR. MONTGOMERY: And I think, Your Honor, the only other thing is that I will not paying any court cost.

MS. CLARK: That is correct.

MR. MONTGOMERY: Or any other fees related to this lawsuit.

THE COURT: All right, Mr. Montgomery, if you'll raise your right hand. Do you solemnly affirm under penalties of perjury to answer all the following questions truthfully and fully to the best of your ability, so help you God?

MR. MONTGOMERY: Yes, I do.

THE COURT: All right. So you've heard the settlement which you've outlined in partial and which Miss Clark has outlined in partial. And basically the settlement is they're going to take the $529,069 and I think it was 68 cents?

MS. CLARK: 58.

THE COURT: Fifty-eight, five eight?

MR. MONTGOMERY: Yes.

THE COURT: And 58 cents. That will be financed at 7 percent over a 27 year period at a fixed rate.

There is $15,000 that the Plaintiff has placed in Chapter XIII, the bankruptcy court, to the trustee towards this obligation. That money will be returned to the Plaintiff.

The Plaintiff's first payment to Citibank North America will begin on October the 1st of 2002.

There are two outstanding issues. One is the interest rate of $48,137.86; was that correct:

MR. MONTGOMERY: Correct.

THE COURT: And the $32,918.51 which represented the back taxes. Those amounts will be capitalized. In other words, they will be put on a 27 year balloon at no interest rate.

The credit agency will be notified that the disputes have been resolved between the parties, and the Defendant will do this.

The Plaintiff will grant releases to the Defendant and to her other – and to all three entities which she represents and the Plaintiff will file dismissals with prejudice.

The Defendant further agrees to waive any legal fees. Defendant agrees to waive any late charges and also any costs associated with this matter.

Is that your understanding, sir?

MR. MONTGOMERY: Yes, Your Honor.

THE COURT: Miss Clark, is that your understanding?

MS. CLARK: It is my understanding, Your Honor. Would you like me to prepare an order?

THE COURT: Prepare and order and I will sign such an order.

MS. CLARK: Thank you, Your Honor.

MR. MONTGOMERY: Thank you, Your Honor.

THE COURT: Thanks, both of you.

MR. MONTGOMERY: And I apologize for taking the Court's time.

THE COURT: Well, you did the right – settlement was the right thing because this case, unfortunately not due to – entirely due to you was not really ready for trial.

MS. CLARK: Please thank the jury on my behalf, Your Honor.

MR. MONTGOMERY: Thank you, Your Honor.

THE COURT: Thank you. We stand adjourned.

(Proceedings concluded at 2:07 P.M.)

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I, Mary S. Rowland, Certified Electronic Court Recorder, hereby certify that the foregoing 22 pages are a full, true and correct transcript of the proceedings recorded by Rosemarie

L. Coleman, CER 2954, in the matter of Duane Montgomery vs Citibank, N.a., a New Jersey Corporation in the 52nd District Court in Novi, Michigan on Wednesday, August 21, 2002 before the Honorable Dennis N. Powers.

/s/ Mary S. Rowland
Mary S. Rowland
CER 1395

APPENDIX E

Michigan Court Rule 4.201(F)(2)

Right to an Attorney. If either party appears in person without an attorney, the court **must** inform that party of the right to retain an attorney. The court must also inform the party about legal aid assistance when it is available.

Supreme Court, U.S.
FILED

06 10 3 [illegible] 2006

OFFICE OF THE CLERK

No. ——

In the
Supreme Court of the United States

DUANE MONTGOMERY,

Petitioner,

v.

CITIBANK, NA,

Respondent,

On Petition for a Writ of Certiorari to the Michigan Supreme Court

SUPPLEMENTAL APPENDIX OF PETITIONER

DUANE MONTGOMERY
P.O. BOX 251242
W. BLOOMFIELD, MI 48322
(313) 550-2358

Petitioner In Pro Per

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

APPENDIX F

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No. 05-DA8321-AV

[Filed September 19, 2005]

CITIBANK, N.A.
Plaintiff/Appellee,

V

DUANE MONTGOMERY,
Defendant/Appellant.

ORDER OF DISMISSAL OF APPEAL FROM REJECTION OF COUNTERCLAIM

At a session of said Court, held in the County Courthouse, Oakland County, State of Michigan

On 9-15-05
Present Hon. Wendy Potts
Circuit Court Judge

Upon Motion of the Plaintiff and a hearing in open court, the Court having heard the argument of the parties, and the Court being fully advised as to the premises;

IT IS HEREBY ORDERED THAT:

That the above-referenced appeal is dismissed with prejudice. Costs and Attorney fees are awarded to the Plaintiff/Appellee in the amount of $ 750^{00} to be paid by the Defendant/Appellant within 30 days of entry of this Order.

This is a final Order and resolves all pending claims between the parties.

/s/ Wendy Potts
Circuit Court Judge

APPENDIX G

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

Case No. 05-DA8295 AV

[Filed August 18, 2005]

CITIBANK, N.A.	)
Plaintiff/Appellee	)
	)
v.	)
	)
DUANE MONTGOMERY,	)
Defendant/Appellant.	)
	)

OPINION AND ORDER

At a session of Court, held in the City of Pontiac, County of Oakland and State of Michigan on AUG 18 2005.

PRESENT: HONORABLE WENDY POTTS
CIRCUIT COURT JUDGE

This matter is before the Court on a Motion for Order Dismissing Appeal of a Judgment of Possession, filed by the Appellee. For the reasons stated below, the Motion is GRANTED.

On June 1, 2005, a Landlord/Tenant Judgment of Possession was entered in the 48th District Court in favor of the Appellee. The Judgment was the final culmination of extensive litigation regarding the foreclosure of the Appellant's home. Prior to the entry of the June 1, 2005 Judgment, the Appellant filed various appeals, circuit court actions, bankruptcy petitions and other actions regarding the foreclosure proceeding.

After the June 1, 2005 Judgment was entered, the Appellant filed a Motion for Stay in the District Court. The Motion was granted but was contingent on the payment of a bond and escrow payments of $4,700.00 per month. The Appellant failed to file the bond or make the required escrow payments. Thus, the District Court Judge lifted the stay and issued a Writ of Restitution. The Appellant was evicted from the home on June 23, 2005.[1]

In addition, after the June 1, 2005 Judgment of Possession was entered, the Appellant filed a document in the 48th District Court seeking damages in the amount of $10 million entitled "Defendant Duane Montgomery's Money Claims and Counterclaims Compliant and Jury Demand...". Because this pleading was filed after the Judgment was entered, the District Court issued an "Order Rejecting Pleading and Notice". The Appellant filed a separate Claim of Appeal regarding the rejection of the above described document.[2] However, the Appellee has not filed a motion to dismiss that action.

---

[1] At the August 17, 2005 hearing on the Appellee's Motion, the Appellant indicated on the record that he had recently filed a bond.

[2] See Case Number 2005-DA 8321 AV.

According to the Appellant, this action, arising out of the June 1, 2005 Judgment should be dismissed because on July 5, 2005, the District Court Clerk served the parties with an Order of Transmittal/Certification to Transmit Record on Appeal. Thus, pursuant to the Michigan Court Rules, the Appellant's brief was due 21 days later, on July 26, 2005. However, the Appellant failed to file a brief.

The Appellee also argues there are no grounds for an appeal and the appeal is vexatious and was filed to harass the Appellee and increase its fees.

The Appellee seeks damages pursuant to MCR 7.101(P)(1) which provides that the Court may, on its own initiative or the motion of a party, dismiss an appeal and assess actual and punitive damages or take other disciplinary action if it determines the appeal was vextious. The Appellee seeks damages in the amount of $1,790.00, the amount of attorney fees and costs incurred.

In his response, the Appellant failed to address the issues raised by the Appellee. Rather, he simply asserted that the District Court improperly rejected his "counter claim". As noted earlier, the Appellant filed another Claim of Appeal regarding this issue. However, that case is not before the Court at this time.

The Court notes the record in this case was not transmitted until July 11, 2005. MCR 7.101(I) provides that within 21 days after the trial court clerk notifies the parties that the record has been sent to the circuit court, the Appellant must file a brief and serve it on the Appellee. Thus, the Appellant had until August 1, 2005 to file a brief. At the August 17, 2005 hearing on the Appellee's Motion, the

Appellant indicated he had not yet filed a brief. However, he indicated he was now prepared to do so.

MCR 7.101(J) provides if an appellant fails to comply with MCR 7.101(I) and neither the trial court nor circuit court has granted a motion for further time, on 7 days notice, the appeal may be considered abandoned and the case dismissed. The Court Rule also provides compliance after the 21 day period does not preclude dismissal unless the appellant shows a reasonable excuse for the late filing.

The Court finds the Appellant failed to file a brief within the required 21 day period or thereafter. Furthermore, he has failed to show a reasonable excuse for that failure.[3] Thus, pursuant to MCR 7.101(I) and (J), the Claim of Appeal of the Judgment of Possession is dismissed.

Furthermore, based on the record of the District Court, it appears there are no grounds whatsoever to support the Appellant's claim. However, based on the record before the Court, there is no basis to find the appeal was filed for an improper purpose. Thus, the Appellee's request for damages is denied.

IT IS SO ORDERED.

---

[3] At the hearing on the Appellee's Motion, the Appellant stated the brief was not timely filed because he was waiting for a certain transcript, related to the other appeal.

/s/_____
WENDY POTTS
CIRCUIT COURT JUDGE

DATED AUG 18 2005

APPENDIX H

IN THE 48TH JUDICIAL DISTRICT COURT

[Filed July 7, 2005]

CITIBANK, NA	)
Plaintiff(s)	)
	)
-vs-	)
	)
DUANE MONTGOMERY,	)
Defendant(s)	)
	)

ORDER REJECTING PLEADING AND NOTICE

Notice to: Duane Montgomery

The Court has examined the following pleading and orders the Clerk to reject it and return it to you for the reasons noted below:

DATE RECEIVED: 6/1/05

PLEADING TITLE/FILER:
Duane Montgomery's Appearance & Answer & Jury Demand; Duane Montgomery's Money Claims & Counter Claims & Jury Demand

REASON:

XX Pleadings were filed after the Possession Judgment was issued and the case was closed.

If you resubmit a corrected pleading, a copy of this order should accompany the resubmitted pleading.

DATE: 7/7/05

/s/
JUDGE DIANE D'AGOSTINI P44512

DATE MAILED: 7/7/05 BY: /s/ Ann Miller

APPENDIX I

STATE OF MICHIGAN JUDICIAL DISTRICT
48th District Court

Case No. 05 31871 LT7

[Filed June 1, 2005]

Citibank, N.A., solely as trustee Plaintiff	)
v	)
Duane Montgomery, Mr. OCCUPANT, Mrs. OCCUPANT Defendant	)

JUDGMENT LANDLORD-TENANT

THE COURT FINDS:

by [X] hearing

POSSESSION JUDGMENT

[X] 1. The plaintiff has a right to possession

TO THE DEFENDANT:

4. [X] b. An order evicting you will be issued on or after 6/13/05 unless you move.

[X] 7. No money judgment is entered at this time.

11. **YOU ARE ADVISED** that you may file a motion for a new trial, a motion to set aside a default judgment, or file an appeal and appeal bond. This must comply with all court rules and must be filed in court by 6/13/05. You may want legal help.

6/1/05 /s/

Date Judge

APPENDIX J

STATE OF MICHIGAN
48TH JUDICIAL DISTRICT
(OAKLAND COUNTY)

Circuit Court No. 05DA8295AV
District Court No. 05-31871-LT7

[Filed June 1, 2005]

CITIBANK, N.A.,	)
Plaintiff,	)
	)
-vs-	)
	)
DUANE MONTGOMERY,	)
Defendant.	)
	)

HEARING PROCEEDINGS

BEFORE THE HONORABLE
DIANE D'AGOSTINI, DISTRICT JUDGE

Videotaped in Bloomfield Township,
Michigan - June 1, 2005

[pg. 3]

Bloomfield Township, Michigan
June 1, 2005 - 10:02:53 a.m.

THE COURT: Calling Citibank versus Duane Montgomery, 05-31871.

MS. CLARK: Good morning, your Honor.

THE COURT: Good morning.

MS. CLARK: Michelle Clark--

THE COURT: Was this filed today?

MS. CLARK: No. I'm sorry, was what filed?

THE COURT: The motion. I'm a little unclear.

MS. CLARK: I am here on a complaint for possession. I am the Plaintiff.

MR. MONTGOMERY: Yes, your Honor. I filed the motion today, two motions: One, a motion to quash or strike the Plaintiff's summons and complaint.

MS. CLARK: I have not been served.

MR. MONTGOMERY: Well, your Honor, I did a proof of service yesterday. I just received this summons and complaint yesterday. I still haven't received the mail version from the Court. Also was a motion for summary disposition.

THE COURT: Okay. Today is the date set for the hearing on the termination of tenancy. Is that

[pg. 4]

correct?

MS. CLARK: That's correct, your Honor.

THE COURT: Okay.

And, Mr. Montgomery, you then filed a motion today--

MR. MONTGOMERY: Yes, your Honor.

THE COURT: --to strike and a motion for summary?

MR. MONTGOMERY: Yes, your Honor.

THE COURT: Okay.

MR. MONTGOMERY: I also paid the jury demand fee, your Honor.

THE COURT: Okay.

Counsel, is there anything that you wish to state to that?

MS. CLARK: Yes.

THE COURT: I know that you--well, go ahead.

MS. CLARK: Okay. Let me just start by saying that Plaintiff went to foreclosure sale on November 23rd, and the six-month redemption period expired. But we have a five-year history with this Defendant, and it's no surprise to me that he's filed these motions.

Mr. Montgomery has filed three separate

[pg.5]

Circuit Court actions. The first one, we entered into a consent on the day of trial, and he appealed one week later. He has--I've prevailed in every Circuit Court action. He has appealed every Circuit Court action. He has filed four separate Chapter 13 bankruptcies. He has appealed every adverse decision on every one of those. He is fifty-six months in default, living in a very nice house in West Bloomfield. No payments for fifty-six months. What he's doing, your Honor, is blowing more smoke by filing these motions.

I don't want to adjourn this. I want to settle every--I want to go through, word by word, right now, if it's okay with you, because this has gone on forever.

THE COURT: Okay. Well, why don't you tell me about the motion?

MS. CLARK: I don't have the motion.

THE COURT: Okay. So, you have not been served with any motion?

MS. CLARK: No.

THE COURT: Okay. As far as you're concerned, today is your hearing date?

MS. CLARK: That's right, your Honor. I want to (inaudible) possession within ten days.

THE COURT: Okay.

[pg. 6]

Mr. Montgomery, your response, sir.

MR. MONTGOMERY: Yes, your Honor. First of all, there was a couple of objections that I had filed with the Court today. This was my first available time to prepare a response or an answer. Under the Court Rules, I have to file an answer to the Plaintiff's summons and complaint by the date of trial, which I've done under MCR 2.115 and 2.116: one, for the motion to strike the summons and complaint; and the other for summary disposition.

Specifically, for the first motion, under MCR 2.115, Citibank is looking--

THE COURT: Well, hold on. Hold on. These motions were filed this morning. You have not served opposing counsel. I'm not stating I'm hearing these motions, Mr. Montgomery. So, why don't you tell me the how and why?

MR. MONTGOMERY: Well, your Honor, I put them in the mail--

THE COURT: I'm sorry?

MR. MONTGOMERY: I put them in the mail. That was the only way I had--

THE COURT: When? I mean, we have them stamped today.

MR. MONTGOMERY: Yes.

[pg.7]

THE COURT: So, when would you have put them in the mail?

MR. MONTGOMERY: Yesterday, your Honor. That's what my proof of service--

THE COURT: And you think that's appropriate under the Court Rules?

MR. MONTGOMERY: Your Honor, I just got the summons and complaint. I just got the summons and complaint. The proof of service states that it was posted sometime on the twenty-seventh, and it was mailed out some point on the twenty-fourth.

THE COURT: Okay. Well, the main issue that I have here, Counsel, is that he has filed--

Or you indicate that you have filed a jury demand today and you paid the fee.

What is your response to that?

MS. CLARK: My response, your Honor, is that we can right now, today, determine whether there are issues of fact that need to go to the jury; and that's what I want to do. I don't want this adjourned. He'll file another bankruptcy. He will do something.

MR. MONTGOMERY: Well, your Honor, my affirmative defenses--

MS. CLARK: Excuse me. Excuse me.

MR. MONTGOMERY: Oh, excuse me.

[pg. 8]

MS. CLARK: I have an order from the Bankruptcy Court that validates the sale I'm in front of this Court on. A federal judge validated the sale. A few weeks ago, he went in front of Judge Colleen O'Brien, asking to stay execution of the sheriff's deed. She denied that motion. Higher courts have already ruled.

So, why don't we go through what he says his defenses are, one by one? And we'll try to figure out if the higher courts have already addressed the issues. What he typically does is he tries to re-litigate--

THE COURT: Counsel, I'm not asking for a history here. I have to be fair for these facts. You're clear on that?

MS. CLARK: Yes, I'm clear.

THE COURT: I understand, you're aggravated, okay?

MS. CLARK: Yes.

THE COURT: But, please, it's about what's happening here. He's filed a jury demand today. You tell me how I can forego that.

MS. CLARK: If I could review his answer, if we can look and see if there's actually a factual matter that requires going to the jury--

THE COURT: Well, all right. If you're

[pg. 9]

telling me, then, that you--that there are no factual matters, then you're talking about a motion for summary. I'm a little unclear on what you're talking about.

MS. CLARK: Well, this is a summary proceeding. This is a summary proceeding. I've been doing this for years, and, you know, if he can't give, on this date, a genuine factual dispute, then I'm entitled to a judgment of possession on this date. Yes, he's entitled to a trial, if there's a real factual dispute. If there's not a factual dispute, he's not entitled to a trial and I'm entitled to judgment.

THE COURT: Okay. You indicated that you needed to review the answer?

MS. CLARK: I do.

THE COURT: Have you looked at the court file, at all?

MS. CLARK: I have not, your Honor.

THE COURT: Okay. I'm going to make that available to you and recall this matter.

Mr. Montgomery, so if you can just hold on.

MR. MONTGOMERY: Thank you, your Honor.

THE COURT: Okay.

(At 10:08:40 a.m., Court recessed, other matters called)
(At 10:46:22 a.m., Court reconvened)

[pg. 10]

THE COURT: Okay, good morning, again. Back on Citibank versus Duane Montgomery, 05-31871.

If I could have your appearances again, please.

MS. CLARK: Michelle Clark, appearing on behalf of Plaintiff.

MR. MONTGOMERY: Duane Montgomery, your Honor, Defendant in pro per.

THE COURT: Okay, Miss Clark, I'll hear from you first.

Let me just state for the record, it is the hearing for termination of tenancy. I looked through the court file here. Defendant has appeared. I don't believe I have an answer in the file, but he did file a motion to quash on today's date with the Court, a motion to strike.

And I believe, when we last spoke, Counsel, you indicated that you were never served with the motion. What is it that you wish to state, Miss Clark?

MS. CLARK: That's correct, I was not served with the motion. He also appears to have filed a motion for summary disposition. And I did have an opportunity to review those documents, and I do believe I'll stipulate to treating them as an answer, so that we don't have to revisit that issue later. I didn't see

[pg. 11]

that an answer was filed, either; but I'm willing to treat those and the issues there as his answer and address them one by one, if you like. But, having reviewed it, I did not see that there is any factual dispute. In fact, in his motion for summary disposition, he states that there is no genuine issue of material fact in this case.

So, therefore, just based on that alone, I think that, if you let anything go to the jury, is inappropriate.

THE COURT: Well, what is it you wish to state? You originally indicated that he did file a jury demand.

MS. CLARK: Yes.

THE COURT: And you indicated that there were no questions of fact, or I don't know if you stated no triable issues so--

MS. CLARK: Your Honor, there's no questions of fact. I have a sheriff's deed here. It is signed by the sheriff. The property was posted with notice of the foreclosure. There is an affidavit that notice of foreclosure was published pursuant to statute. We have a valid foreclosure sale. There is nothing to go to the jury with respect to whether or not the foreclosure sale is invalid, and there is nothing in his motion for

[pg. 12]

summary motion to quash or anything else that suggests that there's any procedural defect in the foreclosure process.

THE COURT: When was the foreclosure sale?

MS. CLARK: The foreclosure sale occurred on November 23rd, 19--I'm sorry, 2004.

THE COURT: Can you give me a history here on all of this?

MS. CLARK: Yes. The Defendant originally went in default, if I recall, in 1999; and there was a genuine dispute between Citibank and the Defendant at that time, which was resolved in a context of a Circuit Court action that Defendant filed in Oakland Circuit Court, and a consent was put on the record. And my client wanted to abide by that consent judgment by Mr. Montgomery, who signed the consent, appealed it, and filed a series of bankruptcies and Circuit Court actions after that, never making, you know, never making mortgage payments. And it's now been fifty-six months. And he's appealed to the Michigan Court of Appeals, the Michigan Supreme Court, the Federal District Court for the Eastern District of Michigan, the Sixth Circuit Court of Appeals. All of the lower court decisions have been affirmed, or the courts that he's gone to have refused to hear matters. Recently, the most recent

[pg. 13]

orders--and let me just address, because he will appeal this, as well. So, I'll go through each and every thing that he's put forth in his pleadings.

Defendant claims that the summons is defective. This is a standard S.C.A.O. approved summons. This is what everyone uses. I think this is clearly an argument that fails, because this is Supreme Court approved. He claims that the summons is invalid because it doesn't give a date by which it needs to be served. And he cites Court Rule 2.002, but we're

under MCR 4.201. This isn't a Circuit Court action, or an ordinary District Court action. It's a summary proceeding for possession. We have different court rules, and we have complied with the Court Rules.

He says there's no written instrument on which occupancy was based. But, this is a mortgage foreclosure; it's not a landlord-tenant situation. There was no lease, and he knows that there's no lease.

What we did attach is a sheriff's deed. And, if he says he didn't have a copy, he can have a copy right now. He knows it exists, because he's seen this document many times.

Defendant says that there was no notice to quit attached. And, again, this is a mortgage foreclosure, not a landlord-tenant situation. There is

[pg. 14]

no notice to quit required, because there is no lease. My client purchased property. My client's the owner of the property. My client was never a landlord.

Defendant says service was defective. All I can say to that is that the Court served this. I believe that the bailiff posted the property and the Court served by mailing. I noticed in the court file that it was returned. I believe that he doesn't use that address as being a valid address. He has a P.O. box in Southfield, I believe. So, that was returned; but, obviously, he got notice of it, because he is here. And I do believe that the bailiff posted the property.

He claims that this Court has no jurisdiction. There is a matter pending in Circuit Court. One, it's not an argument

that has merit, because both courts can be hearing matters having to do with the same piece of property. But, more importantly, the Circuit Court action that was reopened because he filed a motion was closed by order dated May 20th, 2005, denying his request for--

THE COURT: That was the last date you had in Circuit Court, May 20th? And what happened there?

MS. CLARK: He brought a motion in front of Judge O'Brien. This is after she had granted summary disposition and he had appealed her summary--in my

[pg. 15]

favor, in Plaintiff's favor. And he appealed that, and then he filed a motion for stay of execution of sheriff's deed on mortgage sale pending appeal. And that was denied. So, he went to the Circuit Court saying, don't let me be evicted while my appeal is pending. And she listened to his argument and read the briefs and she denied his request and re-closed the case. And that's dated May 20th. So, there's no other pending action.

When I filed this case, yes, of course I put there was a pending action, because he had reopened it for purposes of that motion. It's now closed.

He argues res judicata and collateral estoppel, which, you know, is curious, because every order entered in every court has been in favor of Citibank.

So, he wants to present an order here, or even tell you about an order that exists that he didn't frame that doesn't let my client take possession of the property. I would like to

hear about it, because I have, if you'd like to see, a true copy of an order validating that sale by the Federal Bankruptcy Court. The sale is valid. He has no more arguments. So, the arguments that he's making either fail or just are inappropriate, you know, saying that we have to comply

[pg. 16]

with 2.102. You know that's not true. This is a summary proceeding. We don't have to comply with those court rules. It's supposed to be quick and fast. That's the whole point of why we have these proceedings.

I will let him speak. But also, if the Court would like to see any of these orders? They're all true copies.

THE COURT: If I can, please, yes.

Mr. Montgomery, do you have a copy of those orders?

MR. MONTGOMERY: Your Honor, not on me specifically, but I'm aware of what she's referring to.

THE COURT: Okay.

Miss Clark, anything further from you?

MS. CLARK: No, your Honor. Thank you.

THE COURT: Okay, Mr. Montgomery, go ahead.

MR. MONTGOMERY: Yes, your Honor. First, I do have an answer to Plaintiff's complaint.

I read in the Court Rules that says you either must file an answer by the date of trial or the motions under 2.105 and .116, which I have done. I still have available an answer that, if the Court would like, I can actually read my answer into the record, or I can just give the Court my answer.

THE COURT: Go ahead, you can state it on

[pg. 17]

the record.

MR. MONTGOMERY: Okay, your Honor.

The answer to Plaintiff's statement number one is a denial. The Plaintiff has failed to comply with MCR. The Plaintiff's complaint failed to comply with the requirements of MCR 4.201(B)(1)(b) by failing to attach to it a copy of any written instrument on which occupancy was or is based. The Plaintiff's complaint also fails to comply with the requirements of MCR 4.201(B)(1)(c) by failing to have attached to it copies of any notice to quit or any demand for possession. Notice is required under MCR 4.201(B).

Paragraph number two, answer to Plaintiff's statement number two, which is a denial. The Plaintiff's sheriff's deed was a result of a wrongful commenced foreclosure proceeding based on fraudulent claim of a nonexistent modified mortgage note, which the Plaintiff used libelous and slanderous words to falsely and maliciously impugn the Defendant's title to the Defendant's property. The Plaintiff's wrongful foreclosure proceeding under MCL 600.3204 required that an action or proceeding has not been instituted under MCL 600.3204(1)(b), when in fact, as shown in the Plaintiff's

summons and complaint, an action is still pending in Oakland County Circuit Court and was pending

[pg. 18]

during the Plaintiff's wrongful foreclosure proceeding. Furthermore, in my affirmative defense, either the Defendant did not default on the modify mortgage note.

Paragraph number three, answer to Plaintiff's statement number three, is an admission. Defendant is in possession of all property the Plaintiff claims, and the Plaintiff's claims are barred by the adoption of res judicata as outlined in cite *Allen* versus *McCurry*, 449 US 90, 79-99, 1980, and *Migra, M-I-G-R-A*, versus *Warren City School District,* 465 US 75, 84-85, 1984, and the Doctrine of Collateral Estoppel, which precludes re-litigation of the same issues of fact or law actually litigated and decided in a prior action between the same parties and necessary to the judgment, even if decided as part of a different claim or cause of action. And the cite was *Sanders Confectionary Products, Incorporated* versus *Heller Financial, Inc.*, 973 F.2d 474, 480 (6th Circuit, 1992).

Paragraph number four, answer to Plaintiff's statement number four, is a denial. Plaintiff has failed to provide any proof of right to terminate tenancy, and the Plaintiff has failed to comply with the requirements of MCR 4.201 for summary proceedings to recover possession of premises. Plaintiff's claim of

[pg. 19]

mortgage foreclosure sale was based on fraudulent modified mortgage note that was not executed or signed by the Defendant.

Paragraph number five, answer to Plaintiff's statement number seven, is a denial. Plaintiff has failed to provide any demand or notice to quit as required under MCR 4.201(B)(1), lower case (c).

Paragraph number six, answer to Plaintiff's statement number eight, is a denial. Plaintiff is not entitled to judgment or possession due to the fact that the Plaintiff's summons and complaint failed to comply with MCR 4.201.

Paragraph number seven, answer to Plaintiff's statement number eleven, admission. Defendant agrees that a civil action between the parties is still pending in Oakland County Circuit Court and was pending during the Plaintiff's wrongful foreclosure proceedings in violation of MCL 600.3204(1), lower case (b).

In his answer, the Defendant, myself, also prayed for trial by jury under the authority of MCR 4.201, capital (F), as in Frank, (3), if the Defendant does not prevail on the attached motions.

There also with my answer is an affirmative defenses and objection of Defendant Duane Montgomery, in which it states Defendant Duane Montgomery, in pro per,

[pg. 20]

states the following affirmative defenses to Plaintiff's complaint:

Paragraph number one, the foreclosure proceeding was fraudulent because no default occurred on the modification to note and mortgage/deed of trust.

Paragraph number two, the auctioneer, Matthew C. Chodak, C-H-O-D-A-K, whom signed the sheriff's deed, did not have the authority to perform an auction under Michigan law.

Paragraph number three, the foreclosure proceeding was fraudulent, because no modification to note and mortgage deed of trust was recorded with the Register of Deeds as required under the foreclosure by advertisement statutes.

Paragraph number four, the foreclosure proceeding was fraudulent, because the civil action was pending over the amount of the damage during the foreclosure by advertisement.

Paragraph number five, Plaintiff Citibank commenced a fraudulent wrongful foreclosure against Defendant's property.

Paragraph number six, Plaintiff has made no demands for possession or notice to quit as required under MCR 4.201.

Paragraph number seven, Plaintiff's complaint,

[pg. 21]

in whole or in part, are barred by the Doctrines of Res Judicata.

Paragraph number eight, the Plaintiff's complaint, in whole or in part, are barred by the Doctrines of Estoppel.

Paragraph number nine, Plaintiff's claims are barred by the applicable statutes of fraud or the related Parol, P-A-R-O-L, Evidence Rules.

Paragraph number ten, Plaintiff has sustained no damages.

Paragraph number eleven, Plaintiff's claims were resolved in a prior case at the Oakland County Circuit Court.

Paragraph number twelve, Plaintiff's claims are barred by the Doctrines of Unclean Hands.

Paragraph number thirteen, Plaintiff's complaint, in whole or in part, fails to state a claim upon which relief can be granted as a matter of law or fact.

Paragraph number fourteen, Plaintiff's complaint, in whole or in part, are barred by the applicable statute of limitations and/or jurisdictional prerequisites.

Paragraph number fifteen, Plaintiff has suffered no damage and/or has failed to mitigate his

[pg. 22]

damages, entitlement to which is expressly denied.

Paragraph number sixteen, Plaintiff has failed to exhaust his administrative remedies.

Paragraph number seventeen, the proximate cause of any injury or damage to Plaintiff, if any, was not the action of the Defendant, Duane Montgomery.

Paragraph number eighteen, Plaintiff's claims are barred, in whole or in part, by Plaintiff's own actions.

Paragraph number nineteen, Defendant, Duane Montgomery, did not engage in extreme or outrageous, intentional or reckless conduct.

Paragraph number twenty, this Court lacks jurisdiction of the subject matter.

Paragraph number twenty-one, another action has been initiated between the same parties involving the same claim.

Paragraph number twenty-two, the claim is barred because of prior judgment.

Paragraph number twenty-three, any damages claimed by the Plaintiff were the fault of non-parties, Trott & Trott and Michelle Clark.

Paragraph number twenty-four, Defendant reserves the right to amend the affirmative defenses or add affirmative defenses.

[pg. 23]

Lastly was objections. The Defendant Duane Montgomery was not properly served as required by law under the Michigan Court Rules.

Objection number two, the exhibits submitted by Plaintiff was obtained under a fraudulent foreclosure proceeding.

And objection number three, the Plaintiff's summons and complaint has failed to comply with MCR 4.201.

In regards to the summons, your Honor, the Plaintiff has acknowledged that this is a summary proceeding under MCR

4.201. Under that, there's a subsection, capital C, under summons, C 1: The summons must comply with MCR 2.102. That is the basis for the defectancies that I am challenging in the summons, your Honor. It points you to go back to 2.102, which clearly points out in my brief, your Honor, there's no expiration date and there's also the comment as to that the summons actually is not valid unless it's served before that expiration date, which I pointed out in my motion to quash.

Second, your Honor, is the motion for summary disposition was based on the fact that the summons and complaint didn't meet the requirements as outlined in the Court Rules. The Plaintiff Citibank is asking for

[pg. 24]

recovery based on MCL 600.5714, and, as the courts know, it is governed by Michigan Rules 4.201(A), which the Plaintiff has failed to comply with. The Plaintiff is asking for relief, but has not conformed to the Court Rules.

Your Honor, this whole proceeding is the only means that the Defendant has to challenge the foreclosure proceeding. As the Court knows, the foreclosure proceeding is not a judicial proceeding. There was no judge who looked at the evidence and said, okay, proceed with the sale.

The Citibank has had--

THE COURT: Mr. Montgomery, I'm going to interject right there. I am looking at an order here from a bankruptcy judge that indicates that the foreclosure sale is declared valid in all respects.

MR. MONTGOMERY: Yes, your Honor. A--

THE COURT: I am looking at another order from Circuit Judge Colleen O'Brien, ordering that your motion for stay of execution of the sheriff's deed on the mortgage sale is denied.

I am looking at another order here from Judge O'Brien, denying relief, the relief that you were seeking, again regarding the issues that were occurring in Circuit Court.

[pg. 25]

What issues remain for a jury to decide?

MR. MONTGOMERY: Well, your Honor, actually there was no default. ~~Those particular orders, as you saw, address~~ the Plaintiff foreclosed during the bankruptcy proceeding.

THE COURT: Are you asking me to open up this foreclosure issue? Is that what you're asking--

MR. MONTGOMERY: No, your Honor. I--

THE COURT: --this Court to do?

MR. MONTGOMERY: Your Honor, my affirmative defense is that there was no default.

THE COURT: You have been paying for fifty-eight months?

MR. MONTGOMERY: I beg your pardon, your Honor?

THE COURT: You have been paying your mortgage for fifty-eight months, then?

MR. MONTGOMERY: Your Honor, the issue-- they wouldn't accept the payments. Every payment I sent to them, your Honor, was put somewhere else. It wasn't applied to the account. That was the whole reason for the original lawsuit, and that was the reason for the settlement agreement. They foreclosed on a note that never existed, was never signed. They are

[pg. 26]

introducing a mortgage, but, your Honor, the issue is, they're asking what I paid. There's no mortgage note that shows how much the payment was, when the payment was supposed to start. That note was never executed. It was never recorded. The genuine issue, your Honor, I didn't default on the mortgage note, because they never executed the mortgage note; and that's the issue that I think I'm allowed to bring to the jury, your Honor, that they claimed there was a default. There was no default. The orders that they are presenting are orders in regard to them proceeding with the foreclosure sale, even though there was a stay from the Chapter 13. They proceeded with the Chapter 13. That order in regard was that the foreclosure sale was allowed, even though there was a pending bankruptcy.

In this proceeding, your Honor, the only way I have a challenge to the statistics of the foreclosure proceeding is this proceeding here, your Honor. There was no default. The Citibank did not have a mortgage note that has the default clause signed by me. They never executed it, and the mortgage under the statute for advertising--foreclosure by advertising requires that that mortgage had been recorded. There was no recording.

They're also arguing that the Honorable

[pg. 27]

Colleen O'Brien's order modified the mortgage. It actually ordered them to create a modified mortgage, but they never did.

The genuine issue, your Honor, was there a default clause? That's what I'm asking for in my objection to the complaint was, they did not attach anything that shows why I was there. If there was a mortgage note that I defaulted on, your Honor, I'm entitled to that within the complaint, because that's evidence to present at the trial as if there was a true-- there was a genuine issue if there was a default. In this case, your Honor, there was no default. The Plaintiffs have claimed there was a default and has produced no evidence at all in any of the other cases or in this case or in Federal Court that there was a default, your Honor, except to say, he defaulted on a loan. They didn't have any testimony from anyone. They just relied on statements made--

THE COURT: What proof do you have to show me here today that you've been paying?

MR. MONTGOMERY: Your Honor, the proof I wanted to present to the Court is actually in possession of the Plaintiffs, and I wanted the opportunity to subpoena them for that evidence.

THE COURT: Okay, Miss Clark, your response

[pg. 28]

to all this.

MS. CLARK: My response, your Honor, is that everything that he just said to you is the argument that he gave to Judge O'Brien and to the bankruptcy judges in various Chapter 13 bankruptcies. He has tried to litigate these very issues in bankruptcy. They have been determined in bankruptcy. I don't have those orders, but, if you want those--I don't think you need them. I think it's enough that you have the order from Judge O'Brien. His last lawsuit, the oh-four lawsuit, it was exactly the arguments that he has before you today. There's not one missing. Every one of them is in his complaint. Every one of them was resolved in the order that you have in your hand from Judge O'Brien. Judge O'Brien deems the foreclosure process to be justified under the circumstances, and she knows the circumstances, because she spent years listening to them. And, after a year, she determined that it's valid. And after years of bankruptcy judges listening to Mr. Montgomery, they also determined that the foreclosure sale was valid.

MR. MONTGOMERY: Your Honor, you asked me for proof as regards to payments in issue. I have here some history. Before Citibank was handling this, they had a mortgage servicer that handled all the billing,

[pg. 29]

called ADVANTA Mortgage.

Your Honor, I have here three cashier's checks that was mailed in as payment to the Plaintiff: one in the amount of forty-five hundred dollars, dated August the 20th of '99; the next one in the amount of forty-five hundred dollars, dated November the 1st of '99; and another one in the amount of four thousand three hundred one dollars and twenty cents, dated November 29th, 1999.

Also attached to these cashier's checks, your Honor, is a letter from ADVANTA addressed to me, dated March 1st of 2000. In it, it states that, Dear Mortgager, enclosed you will find your remittance in the amount of thirteen thousand three hundred and one and twenty cents. These funds are being returned to you because it is not clear if you had placed stop payment on these checks. Therefore, we are returning them to you for your disposition. We verify the total amount due and request you please contact the loss and mitigation department. Respectfully, ADVANTA Mortgage.

Your Honor, would you like to review this document?

THE COURT: Well, Mr. Montgomery, the problem is, you want to reopen issues that have been litigated by two other courts. It's not for me to decide, sir. I've given you the opportunity to make

[pg. 30]

your presentation to see if I could find any whatsoever triable issues, and I'm struggling with that.

The argument from the Plaintiff was that the sheriff's deed was properly posted, there was a valid foreclosure sale on November 23rd of '04, and that there were no procedural defects there.

The original default was in 1999. She indicated that there were numerous appeals, that there was a bankruptcy, and payments have never been made for fifty-six months, and that you've continued to reside at this location. All the lower court decisions were affirmed.

Your argument was that the summons was defective. I can't find any defect there. The standard form was used.

You also argued that the summons was invalid. Under Court Rule, this is summary proceeding. You're here, so I can't find that you didn't receive notice of it.

As far as there being no written instrument, this was a mortgage foreclosure, not a lease situation; and the sheriff's deed is attached.

On the note, you indicated that there was no notice to quit. Again, this was a mortgage foreclosure and the client here--or the Plaintiff here is not a
[pg. 31]

landlord, but a bank.

Again, on the service issue, you are here and you clearly received notice.

As far as your res judicata argument, that there was a Circuit Court matter pending, counsel indicated that that was based upon your appeal, which was denied and there are no other pending actions.

Today is the date set for a hearing regarding termination of tenancy. Now, you did come to court today, file motions today, which I have to deny. I mean, the fact that I'm even hearing them would be allowing you to violate the Court Rules. But, assuming I get beyond that, you have not stated anything which I could really find to be a valid argument.

I am looking at three orders, specifically the order from the United States Bankruptcy Court dated December 29th,

2004. There are certainly a lot of issues that occurred here, but, specifically, it states: It is further ordered that . . . . Move on to November 23rd, 2004, foreclosure sale of the property above described and commonly known as 6941 Golden Court, West Bloomfield, Michigan, is hereby declared valid in all respects.

I have further orders, which I alluded to previously, from Colleen O'Brien in the Oakland County

[pg. 32]

Circuit Court also indicating that it is hereby ordered that Plaintiff's motion for stay of execution of the sheriff's deed on the mortgage sale pending appeal is denied. That's dated May 20th of '05, a very short time ago.

The Court Rule--as I stated, you filed a jury demand, but I am looking at 4.201(J)(2). At trial--which today is your trial date, unless you ask for a jury demand, which you did pay for. At trial, the court must first decide pretrial motions -- which I've done, I've heard your motions --

And, Counsel, I've certainly heard yours, as well.

-- and determine if there is a triable issue. If there is no triable issue, the court must enter judgment.

I cannot find any triable issue here for the jury. You are asking to re-litigate issues that were already decided by other courts and other judges, and I can't have that happen here.

Your motion for eviction, Counsel, is granted.

MS. CLARK: I have a proposed order, your Honor. May I approach?

THE COURT: Yes.

MR. MONTGOMERY: Your Honor, may I get one

[pg. 33]

other . . . .

THE COURT: I'm all set, Mr. Montgomery. I'm not taking any further argument.

MR. MONTGOMERY: Okay, thank you, your Honor.

Your Honor, may I make a verbal motion right quick to save the Court time?

THE COURT: For what?

MR. MONTGOMERY: Staying your judgment pending appeal.

THE COURT: Counsel, do you wish to respond?

MS. CLARK: I think that Mr. Montgomery needs to file an appropriate motion. I think an oral motion is inappropriate, because I need an opportunity to respond.

THE COURT: It is denied at this time. You could certainly file a written one, if you wish.

MR. MONTGOMERY: Thank you, your Honor.

Your Honor, would that order reflect that my jury demand has been denied?

THE COURT: Correct. Under MCR 2.01(J)(2), I am finding that there is no triable issue for a jury, and that is why I am entering judgment. Thank you.

You may approach.

[pg. 34]

(At 11:17:38 a.m., proceedings concluded)

STATE OF MICHIGAN)
)
COUNTY OF OAKLAND)

I certify that this transcript, consisting of 34 pages, represents the complete, true and correct rendition of the videotape of the proceedings as recorded on June 1, 2005.

/s/
Carolyn A. Herz, CER 4529
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Dated: June 7, 2005